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# **CALIFORNIA STATUTORY WILL**

## **CALIFORNIA PROBATE CODE § 6240**

### **QUESTIONS AND ANSWERS ABOUT THIS CALIFORNIA STATUTORY WILL**

The following information, in question and answer form, is not a part of the California Statutory Will. It is designed to help you understand about Wills and to decide if this Will meets your needs. This Will is in a simple form. The complete text of each paragraph of this Will is printed at the end of the Will.

**1. What happens if I die without a Will?** If you die without a Will, what you own (your "assets") in your name alone will be divided among your spouse, children, or other relatives according to state law. The court will appoint a relative to collect and distribute your assets.

**2. What can a Will do for me?** In a Will you may designate who will receive your assets at your death. You may designate someone (called an "executor") to appear before the court, collect your assets, pay your debts and taxes, and distribute your assets as you specify. You may nominate someone (called a "guardian") to raise your children who are under age 18. You may designate someone (called a "custodian") to manage assets for your children until they reach any age between 18 and 25.

**3. Does a Will avoid probate?** No. With or without a Will, assets in your name alone usually go through the court probate process. The court's first job is to determine if your Will is valid.

**4. What is community property?** Can I give away my share in my Will? If you are married and you or your spouse earned money during your marriage from work and wages, that money (and the assets bought with it) is community property. Your Will can only give away your one-half of community property. Your Will cannot give away your spouse's one-half of community property.

**5. Does my Will give away all of my assets? Do all assets go through probate?** No. Money in a joint tenancy bank account automatically belong to the other named owner without probate. If your spouse or child is on the deed to your house as a joint tenant, the house automatically passes to him or her. Life insurance and retirement plan benefits may pass directly to the named beneficiary. A Will does not necessarily control how these type of "nonprobate" assets pass at your death.

**6. Are there different kinds of Wills?** Yes. There are handwritten Wills, typewritten Wills, attorney-prepared Wills, and statutory Wills. All are valid if done precisely as the law requires. You should see a lawyer if you do not want to use this statutory Will or if you do not understand this form.

**7. Who may use this Will?** This Will is based on California law. It is designed only for California residents. You may use this form if you are single, married, or divorced. You must be age 18 or older and of sound mind.

**8. Are there any reasons why I should NOT use this statutory Will?** Yes. This is a simple Will. It is not

designed to reduce death taxes or other taxes. Talk to a lawyer to do tax planning, especially if (i) your assets will be worth more than \$ 600,000 at your death, (ii) you own business related assets, (iii) you want to create a trust fund for your children's education or other purposes, (iv) you own assets in some other state, (v) you want to disinherit your spouse or descendants, or (vi) you have valuable interests in pension or profit sharing plans. You should talk to a lawyer who knows about estate planning if this Will does not meet your needs. This Will treats most adopted children like natural children. You should talk to a lawyer if you have stepchildren or foster children whom you have not adopted.

**9. May I add or cross out any words on this Will?** No. If you do, the Will may be invalid or the court may ignore the crossed out or added words. You may only fill in the blanks. You may amend this Will by a separate document (called a codicil). Talk to a lawyer if you want to do something with your assets which is not allowed in this form.

**10. May I change my Will?** Yes. A Will is not effective until you die. You may make and sign a new Will. You may change your Will at any time, but only by an amendment (called a codicil). You can give away or sell your assets before your death. Your Will only acts on what you own at death.

**11. Where should I keep my Will?** After you and the witnesses sign the Will, keep your Will in your safe deposit box or other safe place. You should tell trusted family members where your Will is kept.

**12. When should I change my Will?** You should make and sign a new Will if you marry or divorce after you sign this Will. Divorce or annulment automatically cancels all property stated to pass to a former husband or wife under this Will, and revokes the designation of a former spouse as executor, custodian, or guardian. You should sign a new Will when you have more children, or if your spouse or a child dies. You may want to change your Will if there is a large change in the value of your assets.

**13. What can I do if I do not understand something in this Will?** If there is anything in this Will you do not understand, ask a lawyer to explain it to you.

**14. What is an executor?** An "executor" is the person you name to collect your assets, pay your debts and taxes, and distribute your assets as the court directs. It may be a person or it may be a qualified bank or trust company.

**15. Should I require a bond?** You may require that an executor post a "bond." A bond is a form of insurance to replace assets that may be mismanaged or stolen by the executor. The cost of the bond is paid from the estate's assets.

**16. What is a guardian?** Do I need to designate one? If you have children under age 18, you should designate a guardian of their "persons" to raise them.

**17. What is a custodian?** Do I need to designate one? A "custodian" is a person you may designate to manage assets for someone (including a child) who is between ages 18 and 25 and who receives assets under your Will. The custodian manages the assets and pays as much as the custodian determines is proper for health, support, maintenance, and education. The custodian delivers what is left to the person when the person reaches the age you choose (between 18 and 25). No bond is required of a custodian.

**18. Should I ask people if they are willing to serve before I designate them as executor, guardian, or custodian?** Probably yes. Some people and banks and trust companies may not consent to serve or may not be qualified to act.

**19. What happens if I make a gift in this Will to someone and they die before I do?** A person must survive you by 120 hours to take a gift under this Will. If they do not, then the gift fails and goes with the rest of your assets. If the person who does not survive you is a relative of you or your spouse, then certain assets may go to the relative's descendants.

**20. What is a trust?** There are many kinds of trusts, including trusts created by Wills (called "testamentary trusts") and trusts created during your lifetime (called "revocable living trusts"). Both kinds of trusts are long-term arrangements where a manager (called a "trustee") invests and manages assets for someone (called a "beneficiary") on the terms you specify. Trusts are too complicated to be used in this statutory Will. You should see a lawyer if you want to create a trust.

## **INSTRUCTIONS FOR THE CALIFORNIA STATUTORY WILL**

1. **READ THE WILL.** Read the whole Will first. If you do not understand something, ask a lawyer to explain it to you.
2. **FILL IN THE BLANKS.** Fill in the blanks. Follow the instructions in the form carefully. Do not add any words to the Will (except for filling in blanks) or cross out any words.
3. **DATE AND SIGN THE WILL AND HAVE TWO WITNESSES SIGN IT.** Date and sign the Will and have two witnesses sign it. You and the witnesses should read and follow the Notice to Witnesses found at the end of this Will.

## **CALIFORNIA STATUTORY WILL OF**

\_\_\_\_\_  
Print Your Full Name

### **1. WILL. THIS IS MY WILL. I REVOKE ALL PRIOR WILLS AND CODICILS.**

### **2. SPECIFIC GIFT OF PERSONAL RESIDENCE.**

*(OPTIONAL—Use ONLY if you want to give your personal residence to a different person or persons than you give the balance of your assets to under Paragraph 5 below.)*

### **I GIVE MY INTEREST IN MY PRINCIPAL RESIDENCE AT THE TIME OF MY DEATH (SUBJECT TO MORTGAGES AND LIENS) AS FOLLOWS:**

*(Select one choice only and sign in the box after your choice)*

- a. Choice One: All to my spouse, if my spouse survives me; otherwise to my descendants (my children and the descendants of my children) who survive me.

- b. Choice Two: Nothing to my spouse; all to my descendants (my children and the descendants of my children) who survive me.

- c. Choice Three: All to the following person if he or she survives me: (Insert the name of the person):

- d. Choice Four: Equally among the following persons who survive me: (Insert the name of 2 or more persons)

### **3. SPECIFIC GIFT OF AUTOMOBILES, HOUSEHOLD AND PERSONAL EFFECTS**

*(OPTIONAL—Use ONLY if you want to give automobiles and household and personal effects to a different person or persons than you give the balance of your assets to under Paragraph 5 below).*

**I GIVE ALL OF MY AUTOMOBILES (SUBJECT TO LOANS), FURNITURE, FURNISHINGS, HOUSEHOLD ITEMS, CLOTHING, JEWELRY, AND OTHER TANGIBLE ARTICLES OF A PERSONAL NATURE AT THE TIME OF MY DEATH AS FOLLOWS:**

*(Select one choice only and sign in the box after your choice)*

- a. Choice One: All to my spouse, if my spouse survives me; otherwise to my descendants (my children and the descendants of my children) who survive me.

- b. Choice Two: Nothing to my spouse; all to my descendants (my children and the descendants of my children) who survive me.

- c. Choice Three: All to the following person if he or she survives me: (Insert the name of the person):

\_\_\_\_\_

- d. Choice Four: Equally among the following persons who survive me: (Insert the name of 2 or more persons):

\_\_\_\_\_

\_\_\_\_\_

### **4. SPECIFIC GIFTS OF CASH.** *(Optional)*

**I MAKE THE FOLLOWING CASH GIFTS TO THE PERSONS NAMED BELOW WHO SURVIVE ME, OR TO THE NAMED CHARITY, I SIGN MY NAME IN THE BOX AFTER EACH GIFT. IF I DON'T SIGN IN THE BOX, I DO NOT MAKE A GIFT.**

*(Sign in the box after each gift you make)*

Name of Person or Charity to receive gift (name one only—please print)	Amount of Cash Gift
	Sign your name in this box to make this gift
Name of Person or Charity to receive gift (name one only—please print)	Amount of Cash Gift
	Sign your name in this box to make this gift
Name of Person or Charity to receive gift (name one only—please print)	Amount of Cash Gift
	Sign your name in this box to make this gift
Name of Person or Charity to receive gift (name one only—please print)	Amount of Cash Gift
	Sign your name in this box to make this gift
Name of Person or Charity to receive gift (name one only—please print)	Amount of Cash Gift
	Sign your name in this box to make this gift

## **5. BALANCE OF MY ASSETS.**

**EXCEPT FOR THE SPECIFIC GIFTS MADE IN PARAGRAPHS 2, 3, AND 4 ABOVE, I GIVE THE BALANCE OF MY ASSETS AS FOLLOWS:**

*(Select one choice ONLY and sign in the box after your choice. If I sign in more than one box or if I don't sign in any box, the court will distribute my assets as if I did not make a Will).*

- a. Choice One: All to my spouse, if my spouse survives me; otherwise to my descendants (my children and the descendants of my children) who survive me.

- b. Choice Two: Nothing to my spouse; all to my descendants (my children and the descendants of my children) who survive me.

- c. Choice Three: All to the following person if he or she survives me: (Insert the name of the person):

\_\_\_\_\_

- d. Choice Four: Equally among the following persons who survive me: (Insert the name of 2 or more persons):

\_\_\_\_\_

\_\_\_\_\_

## **6. GUARDIAN OF THE CHILD'S PERSON.**

**IF I HAVE A CHILD UNDER AGE 18 AND THE CHILD DOES NOT HAVE A LIVING PARENT AT MY DEATH, I NOMINATE THE INDIVIDUAL NAMED BELOW AS FIRST CHOICE AS GUARDIAN OF THE PERSON OF SUCH CHILD (TO RAISE THE CHILD). IF THE FIRST CHOICE DOES NOT SERVE, THEN I NOMINATE THE SECOND CHOICE, AND THEN THE THIRD CHOICE, TO SERVE. ONLY AN INDIVIDUAL (NOT A BANK OR TRUST COMPANY) MAY SERVE.**

Name of First Choice of Guardian of the Person

Name of Second Choice for Guardian of the Person

Name of Third Choice for Guardian of the Person

## **7. SPECIAL PROVISION FOR PROPERTY OF PERSONS UNDER AGE 25.**

*(Optional—Unless you use this paragraph, assets that go to a child or other person who is under age 18 may be given to the parent of the person, or to the Guardian named in paragraph 6 above as guardian of the person until age 18, and the court will require a bond; and assets that go to a child or other person who is age 18 or older will be given outright to the person. By using this paragraph you may provide that a custodian will hold the assets for the person until the person reaches any age between 18 and 25 which you choose).*

**IF A BENEFICIARY OF THIS WILL IS BETWEEN AGE 18 AND 25, I NOMINATE THE INDIVIDUAL OR BANK OR TRUST COMPANY NAMED BELOW AS FIRST CHOICE AS CUSTODIAN OF THE PROPERTY. IF THE FIRST CHOICE DOES NOT SERVE, THEN I NOMINATE THE SECOND CHOICE, AND THEN THE THIRD CHOICE, TO SERVE.**

Name of First Choice for Custodian of Assets

Name of Second Choice for Custodian of Assets

Name of Third Choice for Custodian of Assets

**INSERT ANY AGE BETWEEN 18 AND 25 AS THE AGE FOR THE PERSON TO RECEIVE THE PROPERTY:**

*(If you do not choose an age, age 18 will apply.)*

Insert Age

## **8. EXECUTOR.**

**I NOMINATE THE INDIVIDUAL OR BANK OR TRUST COMPANY NAMED BELOW AS FIRST CHOICE AS EXECUTOR. IF THE FIRST CHOICE DOES NOT SERVE, THEN I NOMINATE THE SECOND CHOICE, AND THEN THE THIRD CHOICE, TO SERVE.**

Name of First Choice for Executor

Name of Second Choice for Executor

Name of Third Choice for Executor

**9. BOND.**

**MY SIGNATURE IN THIS BOX MEANS A BOND IS NOT REQUIRED FOR ANY PERSON NAMED AS EXECUTOR. A BOND MAY BE REQUIRED IF I DO NOT SIGN THIS BOX.**

No bond shall be required.

Signature

*(Notice: You must sign this Will in the presence of two (2) adult witnesses. The witnesses must sign their names in your presence and in each other's presence. You must first read to them the following sentences.)*

**THIS IS MY WILL. I ASK THE PERSONS WHO SIGN BELOW TO BE MY WITNESSES.**

Signed on \_\_\_\_\_, 20\_\_ at MCB, Camp Pendleton, California.  
Date

Signature of Maker of Will

**MILITARY TESTAMENTARY INSTRUMENT SELF-PROVING AFFIDAVIT  
AFFIDAVIT**

WITH THE ARMED FORCES  
AT CAMP PENDLETON, CALIFORNIA

We, the testator/testatrix and the witnesses, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that in the presence of a military legal assistance counsel and the witnesses the testator/testatrix signed and executed the instrument as the testator/testatrix military testamentary instrument and that [he][she] had signed willingly (or willingly directed another to sign for [him][her], and that [he][she] executed it as [his][her] free and voluntary act for the purposes therein expressed. It is further declared that each of the witnesses, in the presence and hearing of the testator/testatrix and a military legal assistance counsel, signed the military testamentary instrument as witness and that to the best of [his][her] knowledge the testator/testatrix was at that time eighteen years of age or older or emancipated, of sound mind, and under no constraint or undue influence.

\_\_\_\_\_  
Testator/Testatrix

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Name

Subscribed, sworn to and acknowledged before me by the testator/testatrix, and subscribed and sworn to before me by the witnesses, this date \_\_\_\_\_.  
(Signed)

\_\_\_\_\_  
JUDGE ADVOCATE  
MARINE CORPS BASE, CAMP PENDLETON, CALIFORNIA  
JOINT LEGAL ASSISTANCE OFFICE